

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 6, 2011

In the Matter of N.C. PURCEY, Minor.

No. 304089
Ionia Circuit Court
Family Division
LC No. 11-000039-NA

Before: WILDER, P.J., and HOEKSTRA and BORRELLO, JJ.

PER CURIAM.

Respondent-appellant mother appeals as of right the order terminating her parental rights to the minor child under MCL 712A.19b(3)(b)(ii) and MCL 712A.19b(3)(j). We affirm.

I. BASIC FACTS

Respondent and MP were in a relationship for approximately one-and-one-half years, which ended in September 2010. The two had a child together, NP, who was born in July 2009. When the relationship ended, respondent moved into her mother's home with NP.

At the end of December 2010, respondent met a new boyfriend, Larry Joe Andrews. During the first week of January 2011, she moved herself and NP into an apartment with Andrews and his three children (ages 6, 3, and 2). Respondent's normal work shift was 4:00 a.m. to noon, and when she was working, Andrews was taking care of NP. After moving in with Andrews, the usual contact she had with her mother and with NP's father was vastly diminished. NP's father testified that normally he would simply ask if he could see NP, and respondent would bring NP to his home. But after late December 2010, the father's attempts to see NP were consistently rebuffed by respondent. He explained that, "I would text her and ask her if I can see him, but she would say well, he was sick one weekend, and then I would ask again for another weekend and she would say he's still sick." Leading up to NP's admittance to the hospital on January 31, 2011, the last time the father saw NP was right after Christmas 2010. Similarly, respondent's mother's¹ attempts at seeing NP after respondent moved out were rebuffed.

¹ Hereinafter, we will refer to respondent's mother as "the grandmother," as in NP's grandmother.

However, for some reason, respondent dropped NP off at the grandmother's home on January 21, 2011. The grandmother was not home, but her husband was.² When the grandmother got home, she immediately noticed many issues with NP. First, NP's hands were "swelling and bruised," and NP could not walk. Second, as a result of NP's inability to walk, the grandmother looked at NP's feet and noticed that there was a "great big burn" on the foot. Third, the grandmother noticed that NP's "bottom" was bruised and it looked like someone had "punched him in the face." The grandmother had a "gut feeling" about the injuries and took several photographs of NP in order to document them.³ The grandmother also called respondent to come over immediately with medicine for the foot. When confronted about the injuries, respondent stated the hands were not like that when she dropped NP off. Respondent further claimed that NP was with his father earlier, where the father's nephew punched NP in the face, and the father spanked NP's bottom. And respondent explained the burn to the foot by saying that NP had kicked a wall heater during a temper tantrum.

During January 2011, in a chance meeting, NP's great-aunt bumped into NP and respondent at a Walmart. The great-aunt noticed that NP just sat in the cart, glaring at them without moving his arms or legs. She thought his behavior was very unusual for how NP had acted in the past. Furthermore, the great-aunt noticed bruises on both sides of his cheeks, as if someone had pinched his face with a thumb on the left side and two or three fingers on the right side.

On January 31, 2011, respondent took NP to the Ionia Hospital. Respondent reported to the hospital that NP had fallen down some stairs and had a seizure. The emergency doctor, Dr. Steven Johnson, treated NP that evening. Dr. Johnson noted that NP was exhibiting pain and displayed many "obvious" and "extensive" injuries. Dr. Johnson noticed the following injuries: bruises in various stages of healing all over NP's body, facial lacerations, bite marks on hands and feet, injuries inside lips, a laceration at the bottom of the nose, and burns on the bottom of both feet. Additionally, a full-body X-ray revealed that NP suffered from a fracture of the right humerus (bone that runs from shoulder to elbow) and fractures in the tibia and fibula (bones that run from knee to the foot) on the left leg. Notably, the X-ray revealed that the two fractures in the left leg were of different ages (one was several weeks old and the other was recent). A CT scan of NP's head revealed that he was suffering from a subdural hematoma, which is bleeding inside the head between the skull and the brain. Dr. Johnson noted that these injuries were not consistent with a single fall down a few stairs. Instead, the injuries appeared to be the result of "sustained and repeated trauma [and/or] abuse." Through Dr. Johnson's direction, DHS was contacted.

Because of the potential life-threatening nature of a subdural hematoma, NP was airlifted to DeVos Children's Hospital in Grand Rapids only after a couple hours at the Ionia Hospital. Dr. N. Debra Simms was part of the team at DeVos that observed and treated NP. At the termination hearing, Dr. Simms testified that NP's injuries were too numerous to be able to

² The record is not clear if the husband was also respondent's father.

³ These photographs were admitted into evidence.

describe or recount them all. But NP's major injuries included bruising to the face; bruising to the legs and arms; scrapes and injuries all along back; red and swollen ears that were infected in areas; scabbed abrasions under the nose; scabbed abrasions on both upper and lower lip; injuries inside mouth (torn upper labial frenulum⁴, older cut on tongue, fresh injuries to tongue); hair had been ripped out from left scalp; multiple bite wounds across body; abrasions/lesions on red, swollen, "oozy" hands; burns on both feet; and the right arm was swelling/deformed because of the fractured bone.

Some bite wounds were too old to effectively analyze, but some of them appeared to be from human children and one came from a human adult. Additionally, Dr. Simms also discovered a fracture to the right scapula (shoulder blade), which was a very fresh injury. She noted that the amount of force needed to break this bone is simply not present in routine life for young children. And regarding the bleeding in NP's head, Dr. Simms found that the bleeding had two different ages: the right-side subdural hematoma was estimated to be between 7 and 14 days old and the left-side subdural hematoma was less than 3 days old. In addition to the bleeding around the brain, Dr. Simms also found that there were "extensive" retinal hemorrhages.⁵ Dr. Simms explained that the retinal hemorrhages were significant because they were more extensive than retinal hemorrhages they have witnessed from children that have experienced great trauma, such as falling two stories or having been in a car accident.

When NP came out of sedation, he had trouble eating. Further testing revealed that NP had burns to the back of his throat. The skin at the back of the throat was "very, very red," "blistered," and parts were "sloughing off." Dr. Simms stated that something hot could have caused these burns, or it could have been a chemical burn.

Dr. Simms concluded that NP had no underlying medical disorder that would explain his various injuries. Instead, Dr. Simms diagnosed NP with pediatric physical abuse or battered child syndrome.

On May 4, 2011, respondent's parental rights were terminated after the conclusion of the two-day termination hearing, and NP was placed with his father.

II. ANALYSIS

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds of MCL 712A.19b has been met by clear and convincing evidence and that termination is in the best interests of the child. MCL 712A.19b(5); *In re Sours*, 459 Mich 624,

⁴ Dr. Simms testified that the upper labial frenulum is the flap of tissue that binds lip to upper gum.

⁵ Retinal hemorrhage is defined as "the abnormal bleeding of the blood vessels in the retina, the membrane in the back of the eye."

<<http://medical-dictionary.thefreedictionary.com/Retinal+hemorrhage>> (last accessed November 9, 2011).

632; 593 NW2d 520 (1999). We review for clear error the trial court's findings regarding whether one of the statutory grounds has been met by clear and convincing evidence and whether termination is in the best interests of the child. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A finding of fact is clearly erroneous if we are left with a definite and firm conviction that a mistake has been made. *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

A. MCL 712A.19b STATUTORY FACTORS

Respondent's parental rights were terminated under MCL 712A.19b(3)(b)(ii) and (3)(j), which provide as follows:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

* * *

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Here, there is no doubt that NP was subjected to horrific abuse and trauma. To meet the initial requirement of MCL 712A.19b(3)(b)(ii), the petitioner must show that respondent had the opportunity to prevent the abuse, yet failed to do so. Naturally, in order to meet this requirement, petitioner must first prove that respondent was aware of the abuse. Even though respondent did not testify at the termination hearing, her stated position during the investigation was that she was unaware of any abuse that took place. The trial court found that this claim was disproved by a clear and convincing standard. We agree. The nature of the injuries reveals that they did not occur at one time. On the contrary, the evidence established by a clear and convincing standard that the injuries were of various ages, showing that NP was subjected to repeated abuse over the course of the month. Moreover, respondent admitted to lying when she told the grandmother that some of the injuries present on January 21, 2011, came from the father and the father's nephew. This attempt to mislead unequivocally establishes that respondent was aware of the abuse. Additionally, respondent later admitted to investigators that she was afraid to take NP for medical treatment because she feared that NP would be taken away from her. This admission also shows that she was aware of NP's physical condition. Finally, in the face of the mounting abuse, respondent took affirmative steps to avoid family so that they could not see

what was happening. Thus, the trial court finding that respondent was aware of the abuse was not clearly erroneous.

Likewise, the trial court finding that respondent failed to prevent the abuse was not clearly erroneous. Even when repeatedly confronted with the obvious trauma that NP was being subjected to, there is no evidence that respondent did anything in order to prevent any further abuse. In fact, respondent took *affirmative steps to enable the abuse to continue* by hiding NP from family members, lying about the nature and cause of NP's injuries, and failing to seek medical attention.

Respondent argues that, since she was no longer living with Andrews, the requirements of MCL 712A.19b(3)(b)(ii) and (3)(j), of there being a reasonable likelihood that the child may suffer injury in the foreseeable future, could not be satisfied. This argument is unavailing. Respondent's abject failure to do anything, even in the face of obvious and blatant abuse, shows that she has demonstrated a complete inability to care for the safety of NP. The fact that respondent is not with Andrews anymore is of little consequence. Andrews's conduct was not the reason for the termination proceedings – it was respondent's conduct. Nothing in the record shows that the underlying issue – respondent's poor judgment and decision-making – is corrected. As the trial court pointed out, respondent did not engage in any type of services to address her limited capacity to properly care for NP. As a result, the trial court did not clearly err when it determined that there was a reasonable likelihood that NP would suffer injury in the foreseeable future if he was returned to respondent.

B. BEST INTERESTS

Respondent next argues that there is no evidence that the termination of her parental rights were in the best interests of the child. We disagree. As set forth above, the record reflects that respondent repeatedly made inexcusable choices with regard to NP's care and safety. There is no reason to think that this inability to provide the proper care has changed. Thus, the trial court did not clearly err when it found that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Joel P. Hoekstra

/s/ Stephen L. Borrello